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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Gray (presumed)

Serial No.: 08/663,618

Filed: June 14, 1996

CERTIFICATE OF MAILING

I hereby certify that this correspondence along with any attachments referred to or identified as being attached or enclosed is being deposited with the United States Postal Service as First Class Mail on the date of deposit shown below with sufficient postage and in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231.

9-18-02

Date

Lynette Eliason
Signature

Lynette Eliason
Name (Type/Print)

Petition for Access to Prosecution History
37 C.F.R. § 1.14(c), § 1.14(j) and M.P.E.P. 103

Special Program Law Office
Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. § 1.14(c), the undersigned respectfully petitions the Commissioner for access to the prosecution history of U.S. Patent Application Serial No. 08/663,618, filed on June 14, 1996.

Submitted with this petition is the fee of \$130.00 required by 37 C.F.R. § 1.14(j) and 37 C.F.R. § 1.17(h).

Petitioner desires access such that the prosecution history of the 08/663,618 application may be reviewed.

This petition is being filed in duplicate such that the duplicate copy may be sent to the assignee of record by the Patent Office.

Legal Basis

For legal entitlement to access of the 08/663,618 application prosecution history, or a portion of the 08/663,618 application prosecution history which relates to the common subject matter claimed in U.S. Patent 6,372,212 (Exhibit A), the undersigned relies on 37 C.F.R. § 1.14

and the "special circumstances" described in M.P.E.P. § 103. M.P.E.P. § 103 recites in part "[w]henever a patent relies on the filing date of an earlier but still pending application, the public is entitled to see the entire prior application as filed as well as the portion of the prosecution of the earlier application, if any, that relates to the common subject matter claimed in the patent." (M.P.E.P. § 103, 100-12, *citing In re Dreyfus*, 137 USPQ 475 (Comm'r Pat. 1961)).

Factual Basis

Factually supporting this petition is U.S. Patent 6,372,212 to Gray (April 16, 2002), assigned to ICOS Corporation. On its face, U.S. Patent 6,372,212 claims benefit as a "continuation-in-part" application under 35 U.S.C. § 120 from the application serial no. 08/663,618. (*See, e.g.,* Exhibit A, page 1, [63] and column 1, lines 3-4).

Conclusion

As U.S. Patent 6,372,212 relies on the filing date of the earlier, but still pending 08/663,618 application, the undersigned member of the public is entitled to see the portion of the prosecution of the earlier application that relates to common subject matter claimed in U.S. Patent 6,372,212. Upon granting the above petition, the Office is authorized to charge Deposit Account No. 20-1469 for fees incurred under 37 C.F.R. § 1.14(c)(2) and 37 C.F.R. § 1.19(b)(2)(i) of \$200.00 for the copying of the file wrapper of 400 or fewer pages, and if the file wrapper exceeds 400 pages, any fees incurred under 37 C.F.R. § 1.19(b)(2)(ii).

Respectfully submitted,



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Attachments: Exhibit A
Fee under 37 C.F.R. § 1.14(j) and 37 C.F.R. § 1.17(h)

Date: September 18, 2002
AFN/afn
Document in ProLaw